

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

DARRIN DUHAMEL,

Plaintiff,

vs.

NANCY A. BERRYHILL, Acting
Commissioner of Social Security,

Defendant.

Case No.: 2:17-cv-02858-GMN-EJY

ORDER

Pending before the Court is the Amended Report and Recommendation of the Honorable United States Magistrate Judge Elayna J. Youchah, (ECF No. 72), which states, *inter alia*, that Plaintiff Darrin Duhamel's ("Plaintiff") Amended Motion for Summary Judgment, (ECF No. 52), should be denied and that the Commissioner's Cross-Motion to Remand for Further Proceedings, (ECF No. 57), should be granted in part and denied in part.¹

A party may file specific written objections to the findings and recommendations of a United States Magistrate Judge made pursuant to Local Rule IB 1-4. 28 U.S.C. § 636(b)(1)(B); D. Nev. R. IB 3-2. Upon the filing of such objections, the Court must make a de novo determination of those portions to which objections are made. *Id.* The Court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the Magistrate Judge. 28 U.S.C. § 636(b)(1); D. Nev. IB 3-2(b). Where a party fails to object, however, the Court is not required to conduct "any review at all . . . of any issue that is not the subject of an objection." *Thomas v. Arn*, 474 U.S. 140, 149 (1985). Indeed, the Ninth Circuit has recognized

¹ Also pending before the Court is the Report and Recommendation of Judge Youchah, (ECF No. 68). In light of Judge Youchah's Amended Report and Recommendation, (ECF No. 72), the Report and Recommendation, (ECF No. 68), is **REJECTED as moot**.

1 that a district court is not required to review a magistrate judge's report and recommendation
2 where no objections have been filed. *See, e.g., United States v. Reyna-Tapia*, 328 F.3d 1114,
3 1122 (9th Cir. 2003).

4 Here, no objections were filed, and the deadline to do so has passed.

5 Accordingly,

6 **IT IS HEREBY ORDERED** that the Amended Report and Recommendation, (ECF
7 No. 72), is **ACCEPTED and ADOPTED in full**.

8 **IT IS FURTHER ORDERED** that the Report and Recommendation, (ECF No. 68), is
9 **REJECTED as moot**.

10 **IT IS FURTHER ORDERED** that Plaintiff's Amended Motion for Summary
11 Judgment, (ECF No. 52), is **DENIED** and that the Commissioner's Cross-Motion to Remand
12 for Further Proceedings, (ECF No. 57), is **GRANTED in part and DENIED in part**.

13 **IT IS FURTHER ORDERED** that this matter is remanded to the Commissioner of
14 Social Security under the Compassionate Allowance program as this case has been pending for
15 more than six years, and time is of the essence.

16 **IT IS FURTHER ORDERED** that remand is pursuant to sentence four of 42 U.S.C.
17 § 405(g).

18 **IT IS FURTHER ORDERED** that Plaintiff be permitted to submit additional evidence
19 within 60 days of the date of this Order, and, if needed, receive a new hearing within 150 days
20 of the date of this Order, unless Plaintiff is unable to proceed within that timeframe.

21 **IT IS FURTHER ORDERED** that Plaintiff's testimony be reevaluated given the
22 additional evidence available and to be provided to the ALJ for consideration in determining
23 the credibility of Plaintiff's testimony. The ALJ shall articulate, if appropriate to the ALJ's
24 reevaluation, the specific basis why he continues to discredit Plaintiff's testimony.

25 **IT IS FURTHER ORDERED** that the ALJ reevaluate the analysis of treating

1 physicians' opinions and articulate, if appropriate to the ALJ's reevaluation, why he continues
2 to reject the opinions of these treating physicians.

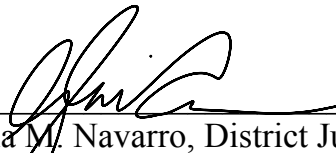
3 **IT IS FURTHER ORDERED** that the ALJ reevaluate all remaining evidence in light
4 of the new evidence presented to assess Plaintiff's symptoms and limitations.

5 **IT IS FURTHER ORDERED** that the ALJ take any further action needed to complete
6 the administrative record and to promptly issue a new decision.

7 **IT IS FURTHER ORDERED** that the ALJ issue a new decision on Plaintiff's
8 application for benefits within 30 days after the record closes at the hearing level.

9 **IT IS FURTHER ORDERED** that Plaintiff be allowed to return to federal court within
10 60 days after the ALJ's opinion on remand if the ALJ does not issue a favorable decision.
11 Plaintiff need not wait for Appeals Council review.

12 **DATED** this 31 day of October, 2019.

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16 Gloria M. Navarro, District Judge
17 United States District Court
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